United Concrete Pipe Corporation *and* International Union of Operating Engineers, Local 501, AFL–CIO. Case 21–CA–28080

December 31, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon a charge filed by the Union June 3, 1991, the General Counsel of the National Labor Relations Board issued a complaint July 31, 1991, against United Concrete Pipe Corporation, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint[1] the Respondent has failed to file an answer.[2]

On September 23, 1991, the General Counsel filed a Motion for Summary Judgment. On October 1, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in said complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional Office by letters dated August 16 and 27, 1991, notified the Respondent that unless an answer was received immediately, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Delaware corporation, is engaged in the manufacture, sale, and distribution of steel reinforced pressure pipes with its principal place of business located at 6501 Clay Street, Riverside, California, where it annually purchases and receives goods and products valued in excess of $50,000 directly from suppliers located outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production, and maintenance employees, shipping and receiving employees, in Respondent's plant located at 6501 Clay Street, Riverside, California, excluding all truck drivers, fork lift operators, all office and clerical employees, guards, watchmen, professional and technical employees, and warehousemen and inspectors, and supervisors as defined in the Act.

For at least the past 19 years, and by virtue of Section 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in the unit described above, and has been recognized as the unit employees' representative by the Respondent. Recognition has been embodied in a series of collective-bargaining agreements, the most recent of which is effective for the period April 1, 1990, to March 31, 1993.

Commencing in January 1991, the Respondent, without prior notification to or bargaining with the Union, changed the terms and conditions of its collective-bargaining agreement with the Union, and the terms and conditions of employment of the unit employees, by discontinuing its contributions to certain pension, health and welfare, and other trust funds established pursuant to Section 302 of the Act. Since the beginning of February 1991, the Respondent has by this conduct refused to adhere to and failed to continue in full force and effect all the terms and conditions of the collective-bargaining

[1] The charge was originally sent June 4, 1991, by certified mail, but was returned to the Regional Office in its original envelope, which had written on it "Refused." When the Regional Office telephoned the Respondent, an electronic message provided a new mailing address. On June 12, 1991, the charge was again sent to Respondent by certified mail, and the Respondent accepted it. The complaint was served by certified mail on July 31, 1991, and was returned unclaimed. It was served by regular mail on August 27, 1991.

[2] We note that the Respondent's refusal or failure to claim certified mail cannot defeat the purposes of the Act. *Oceana No. 1, Inc.*, 295 NLRB No. 10, slip op. at 1 fn. 2 (June 15, 1989).

agreement. The terms and conditions of the agreement the Respondent failed to keep in full force and effect are terms and conditions of employment of unit employees and are mandatory subjects of bargaining.

On May 2, 1991, the Respondent terminated its entire work force, closed its business, and ceased operations and on May 3, 1991, the Respondent sold its business, and its personal and real properties without prior timely notice to the Union of its decision to close and without having afforded the Union an opportunity to bargain in good faith as the exclusive representative of the Respondent's unit employees about the effects on unit employees of its decision to close its business.

By the acts described above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act.

CONCLUSIONS OF LAW

1. By discontinuing contractually required contributions to certain pension, health and welfare, and other trust funds, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act.

2. By failing to provide timely notice to the Union and affording it an opportunity to bargain about the effects on unit employees of terminating its work force, closing its business, ceasing operations, and selling its business and real and personal properties, the Respondent failed to bargain in good faith and thereby has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act.

REMEDY

The Respondent has violated Sections 8(a)(5) and (1) and 2(6) and (7) of the Act, and we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to remit all contractually required pension, health and welfare, and other trust fund contributions.[3] We shall also order the Respondent to make all unit employees whole for any medical or other expenses resulting from the Respondent's failure to make required trust fund contributions,[4] with interest as prescribed in *New Horizons for the Retarded*.[5]

As a result of the Respondent's unlawful failure to bargain in good faith with the Union about the effects of its decision to close its Riverside facility, the terminated unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to Local 501. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with Local 501 concerning the effects of closing the Riverside facility on its employees, and shall accompany our order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the terminated unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968). Thus, the Respondent shall pay its terminated Riverside unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) The date the Respondent bargains to agreement with Local 501 on those subjects pertaining to the effects of the closing of the Riverside facility on its employees; (2) a bona fide impasse in bargaining; (3) Local 501's failure to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with Local 501; (4) Local 501's subsequent failure to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount they would have earned as wages from May 2, 1991, the date on which the Respondent terminated its Riverside operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during

[3] Any additional amounts owed to the employee benefit funds shall be calculated in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

[4] *Kraft Plumbing & Heating*, 252 NLRB 891 (1980).

[5] 283 NLRB 1173 (1987).

the applicable period, less any net interim earnings, and shall be computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In view of the fact that Respondent's Riverside, California facility is currently closed, we shall order Respondent to mail a copy of the attached notice to the Union and to the last known address of each of its former unit employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, United Concrete Pipe Corporation, Riverside, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union of Operating Engineers, Local 501, as the exclusive bargaining representative of the unit employees by discontinuing contractually required contributions to certain pension, health and welfare, and other trust funds. The appropriate unit is:

> All production, and maintenance employees, shipping and receiving employees, in Respondent's plant located at 6501 Clay Street, Riverside, California, excluding all truck drivers, fork lift operators, all office and clerical employees, guards, watchmen, professional and technical employees, and warehousemen and inspectors, and supervisors as defined in the Act.

(b) Failing to bargain in good faith with the Union concerning the effects on employees of its decision to close its Riverside, California facility.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit all amounts owed to the pension, health and welfare, and other trust funds, in the manner set forth in the remedy section of the Decision and Order, and make the employees whole for loss of moneys or benefits resulting from the Respondent's discontinuing contractually required contributions to the pension, health and welfare, and other trust funds.

(b) On request, bargain collectively in good faith with International Union of Operating Engineers, Local 501, AFL–CIO with respect to the effects on employees of its decision to close its Riverside facility, and, if an understanding is reached, embody the understanding in a signed agreement.

(c)Pay the former Riverside unit employees terminated by the Respondent when it closed its Riverside facility in May 1991 their normal wages for the period and in the manner set forth in the remedy section of the Decision and Order.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Mail an exact copy of the attached notice marked "Appendix,"[6] to International Union of Operating Engineers, Local 501, and to each of the employees in the unit who were employed at its former Riverside facility at the time it was closed. Copies of the notice, on forms provided by the Regional Director for Region 21, after being duly signed by the Respondent's authorized representative, shall be mailed immediately upon receipt as directed.

(f) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order what steps the Respondent has taken to comply.

---

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES
GOVERNMENT

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union of Operating Engineers, Local 501 as the exclusive bargaining representative of our unit employees, by discontinuing contractually required contributions to certain pension, health and welfare, and other trust funds as provided in our collective-bargaining agreement with the Union. The appropriate unit is:

> All production, and maintenance employees, shipping and receiving employees, in our plant located at 6501 Clay Street, Riverside, California, excluding all truck drivers, fork lift operators, all office and clerical employees, guards, watchmen, professional and technical employ-

ees, and warehousemen and inspectors, and supervisors as defined in the Act.

WE WILL NOT fail to bargain in good faith with the Union concerning the effects on employees of our decision to close our Riverside, California facility.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit all amounts owed to pension, health and welfare, and other trust funds, and make whole unit employees for loss of moneys or benefits resulting from our failure to make contractually required contributions to the funds, plus interest.

WE WILL, on request, bargain collectively in good faith with the Union with respect to the effects on employees of our decision to close our Riverside facility and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL pay the former Riverside employees we terminated when we closed our Riverside facility in May 1991 their normal wages for a period specified by the National Labor Relations Board, plus interest.

UNITED CONCRETE PIPE CORPORATION